

# **Guidance for New Mexico Resident Military Spouses Claiming Relief From Another State's Income and Withholding Tax Requirements**

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## **Eligibility Requirements**

Beginning with the tax year 2009, a military servicemember's spouse, who is a resident of New Mexico and moves to another state solely to be with their spouse who is in that state because of military orders, may keep their New Mexico residency status and may source their non-military wages and other income from services performed to New Mexico. The qualifying spouse's income is taxed in New Mexico instead of the state where the income is earned.

If you are a military servicemember's non-New Mexico resident spouse who qualifies to claim an exempt New Mexico withholding status based on the Military Spouses Residency Relief Act, see Form RPD-41348.

You must check with the state in which you currently reside, however, generally the following restrictions apply:

- The servicemember must have declared "legal residence for purposes of withholding state income taxes from military pay" in a state other than the state in which they currently reside.
- The servicemember must be in the state in compliance with military orders.
- The servicemember's New Mexico resident spouse must be in the state in which they currently reside solely to be with their spouse.

Under the following conditions the military servicemember's spouse is not eligible or ceases to be eligible for relief under the Military Spouses Residency Relief Act:

- Servicemember leaves the service
- Divorce
- Physical separation due to duty changes – the servicemember's orders move him or her to a location outside the state where the spouse is allowed to join him or her but chooses not to. For example: If the servicemember is posted to an undesirable location or is sent to a training school from which the servicemember will return, and the spouse stays in the state, the spouse no longer qualifies for the relief. Once the servicemember leaves a spouse in another state due to a change in the servicemember's base "home", the spouse no longer qualifies, or
- Spouse commits an action that clearly establishes the state as their state of domicile. Examples: filing a court action, such as a claim for divorce; accepting in-state tuition; applying for certain state benefits such as filing a claim for a tax credit only available to persons domiciled in the other state.

NOTE: Deployment through temporary duty orders (TDY) does not change the base "home" to which the servicemember is assigned. For example, if the servicemember is deployed to a war zone for combat assignment, the spouse still qualifies for relief under the Military Spouses Residency Relief Act.

## **Reporting Requirements**

A military servicemember's New Mexico resident spouse who qualifies for relief under the Military Spouses Residency Relief Act, and who is earning income from services performed in another state, may claim an exempt withholding status from the other state's withholding requirements. The qualifying spouse must inform the employer or payor, that they qualify for the relief, and withholding should begin to be made to New Mexico instead of the state in which they currently reside. The employer or payor may require a statement and documentation establishing that the servicemember's spouse qualifies.

To obtain a refund for 2009 tax withheld to another state, the qualifying military servicemember and New Mexico resident spouse must file an income tax return in the state in which they had tax withheld. The

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qualifying military servicemember's New Mexico resident spouse must also file an income tax return to New Mexico and pay New Mexico tax with the return. On the New Mexico return, the spouse's non-military income must be sourced to New Mexico on Schedule PIT-B. A credit for tax paid to the other state would only be allowed for income not sourced to New Mexico. NOTE: Tax withheld and paid to a state other than New Mexico cannot be directly transferred to New Mexico. You must apply for a refund of tax withheld with the state to which the tax was paid and pay any New Mexico personal income tax due.

A qualified servicemember's spouse must ensure that the tax due is paid to New Mexico through either withholding tax or estimated tax, to avoid penalty on underpayment of New Mexico income tax. Due to the late enactment of the Military Spouses Residency Relief Act, penalty on underpayment of estimated personal income tax for a qualifying military servicemember's spouse's 2009 non-military income will be waived.

**About Domicile in New Mexico**

Your domicile is the place you intend as your permanent home. It is the state where your permanent home is located and where you intend to return whenever you are away (as on vacation, business assignment, educational leave or military assignment). You can have only one domicile. Your New Mexico domicile is not changed until you can show that you have abandoned it and established a new domicile outside the state.

A change of domicile must be clear and convincing. Easily controlled factors are NOT the primary factors to consider in deciding where you are domiciled. If you move to a new location but intend to stay there only for a limited amount of time (no matter how long), your domicile does not change. If your domicile is New Mexico and you go to a foreign country for a business or work assignment, or for study, research or any other purpose, your domicile does not change unless you show that you definitely do not intend to return to New Mexico.

**Important:**

- Spouses cannot pick and choose their states of domicile. They must establish domicile.
- The spouse does not inherit the domicile of the servicemember upon marriage.
- The spouse cannot adopt the domicile of the servicemember – or any other domicile.
- The spouse must be able to show that domicile had been established in another state before moving into the state you currently reside.
- The spouse must have maintained that earlier domicile.
- At minimum, the spouse must have lived in a state before claiming it as domicile.

No single factor determines a person's state of domicile. All factors must be evaluated.